CWP No. 1756 of 2007

5.11.2007. Present: Mr.Subhash Sharma, counsel for the petitioner.
Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Dy.A.G., for respondent No.1.

Issue notice to respondent No.1. Mr.M.S. Chandel, learned Advocate General, on instructions received from Mr.R.M. Bisht, Dy.A.G., waives service of notice on behalf of respondent No.1.

Briefly stated the facts of the case are that the petitioner, who is working as Medical Officer in Community Health Centre Baldwara, District Mandi, H.P., was transferred by respondent No.1 to Primary Health Centre, Gea Bong, vide order, dated 12.7.2006. The petitioner filed an OA before the State Administrative Tribunal against his transfer order. On 16.6.2006, the learned Tribunal was pleased to grant interim relief to the petitioner. The respondent was directed to join his duty at his place of posting by 14th July, 2006, failing which, he would be put under suspension. The petitioner brought this fact to the notice of the respondent that his transfer order has been stayed by the learned Tribunal. The reply to the OA was filed by the respondent. After hearing both the parties, the learned Tribunal, vide its impugned order, dated 5.10.2007, dismissed the OA filed by the petitioner. The petitioner has challenged the said order passed by the learned Tribunal by filing the present writ petition.

We have heard the learned counsel for the parties and have gone through the record of the case.

The petitioner has taken the ground that though he had completed the normal tenure of 3 years at his place of posting, but since the transfer order was effected at the instance of the Excise Minister of H.P. and, therefore, the transfer order is mala fide. It is clear from a perusal of the record that the petitioner, though made some allegations that the transfer order was mala fide having been effected at the instance of Excise Minister, he neither made the said Minister as party to the OA filed before the learned Tribunal nor made him a party before this Court and no opportunity was given to him to rebut the allegations made by the petitioner. The person against whom the allegations are made that at his instance the transfer order has been effected and it is mala fide, the said person has to be given an opportunity to file his reply. Only then, the Tribunal or this Court can make any observation that this transfer order was mala fide or not. This fact was also observed by the learned Tribunal in its order that there is a distinct note in the orders which suggests that the transfer is as per the orders of the Excise and Taxation Minister of H.P., but since he was not made a party, this plea has not found favour with the Tribunal. The Tribunal has clearly observed that the petitioner has completed normal tenure of 3 years and by now has completed 4 years and 5 months and since the petitioner has completed the normal tenure of 3 years, the OA filed by the petitioner was dismissed by the learned Tribunal. No case is made out for interfering with the said order passed by the learned Tribunal, which does not suffer

from any illegality calling for an interference by this Court on any of the grounds. The Appointing Authority has to consider about the stay of an

employee and once the employee has completed the normal tenure and the post is transferable one, he cannot have any grievance unless and until the allegations of mala fide are alleged and proved to some extent and the concerned person is made party so that he can reply to the allegations made which was not done by the petitioner and as such there is no merit in the writ petition filed by the petitioner, which is accordingly dismissed with no order as to costs.

In view of the dismissal of the writ petition, all the pending applications shall also stand dismissed.

(V.K. Ahuja), J. **(Deepak Gupta), J.**

November 5, 2007.
(TILAK)